

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

DAVID SWANK PRINCE,  
Petitioner,

v.

MICHAEL RAMSEY,  
Respondent.

No. 2: 20-cv-1962 TLN KJN P

ORDER

Petitioner is a former state prisoner, proceeding without counsel, with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. For the reasons stated herein, petitioner is granted thirty days from the date of this order to file an amended petition raising all claims he intends to raise in this action, exhausted and unexhausted.

On April 19, 2021, the undersigned ordered petitioner to inform the court within thirty days whether he intended to raise the claims raised in his pending state appeal in the instant action. (ECF No. 21.) If petitioner intended to raise his appellate claims in the instant action, the undersigned ordered petitioner to file a motion to stay pursuant to Rhines v. Weber, 544 U.S. 269 (2005), or Kelly v. Small, 315 F.3d 1063 (9th Cir. 2002). (Id.) If petitioner requested a stay pursuant to Rhines, petitioner was directed to file an amended petition raising his exhausted and unexhausted claims. (Id.)

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1 On September 14, 2021, petitioner filed a motion to stay this action pursuant to Rhines.  
2 (ECF No. 29.) However, petitioner did not file an amended petition raising all of his claims,  
3 exhausted and unexhausted, as required for a stay pursuant to Rhines. Accordingly, petitioner is  
4 granted thirty days from the date of this order to file an amended petition raising all of his claims,  
5 exhausted and unexhausted. Following receipt of the amended petition, the undersigned will  
6 address petitioner's motion to stay.<sup>1</sup>

7 On September 7, 2021, petitioner filed a request for a continuance. (ECF No. 28.) The  
8 undersigned construes this request as a motion for extension of time to respond to the April 19,  
9 2021 order. Good cause appearing, this request is granted and petitioner's September 14, 2021  
10 motion to stay is deemed timely filed.

11 Accordingly, IT IS HEREBY ORDERED that:

- 12 1. Petitioner's September 7, 2021 request for a continuance (ECF No. 28), construed as  
13 a motion for extension of time, is granted;
- 14 2. Petitioner is granted thirty days from the date of this order to file an amended petition  
15 raising all of his claims, exhausted and unexhausted.

16 Dated: September 24, 2021

17   
18 KENDALL J. NEWMAN  
19 UNITED STATES MAGISTRATE JUDGE

20 Pr1962.ord(4)  
21

22 <sup>1</sup> The original petition raised claims alleging ineffective assistance of trial counsel, violation of  
23 Brady v. Maryland, 373 U.S. 83 (1962) and, possibly, a claim alleging denial of the right to self-  
24 representation based on denial of access to a private investigator, denial of access to the law  
25 library, etc. (ECF No. 1.) Petitioner indicated that no claim raised in the original petition was  
26 exhausted. (Id.) In his state appeal, which appears to be still pending, petitioner alleges violation  
27 of his constitutional right to present a defense based on the trial court's evidentiary rulings. (ECF  
28 No. 29 at 5.) In the motion to stay, petitioner states that he also intends to raise a claim alleging  
ineffective assistance of appellate counsel. (Id. at 1.) This claim appears unexhausted.

The amended petition shall include all of the claims discussed above if petitioner intends  
to raise them in this action. The amended petition shall also address whether any of the claims  
have been exhausted.